

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-2577/P1dn
ARG:kjf:jf

July 8, 2013

Until this session, I do not believe there has been any bill previously drafted for the Wisconsin Legislature that directly amends or repeals provisions of the administrative code in a manner unrelated to the statutory procedure for rule suspension under ch. 227. Accordingly, this bill includes novel provisions. We have also included statutory treatments that we believe are necessary to make these rule treatments workable and consistent with the statutes. For example, a “rule” is defined in s. 227.01 (13) as “a regulation, standard, ... *issued by an agency* ...”, but these rule modifications are not issued by DFI; they result from legislative enactment.

I have not conducted any significant research on whether a bill enacted by the legislature and signed by the governor that modifies the details of executive branch rules might be subject to challenge under constitutional principles of separation of powers. I do note that this bill requires the creation of significant amounts of new text in DFI's rules and is not limited to technical modifications. It may be more susceptible to being challenged as overstepping constitutional legislative authority than a bill that merely makes technical changes to executive branch rules. You may wish to recreate some of the text in this draft as a statute rather than a rule.

The instructions for the changes to DFI-Bkg 14.07 were not very specific. Please advise if the changes in the attached draft need modification.

Please let me know if you have any questions or would like any changes made to the attached draft.

Aaron R. Gary
Legislative Attorney
Phone: (608) 261-6926
E-mail: aaron.gary@legis.state.wi.us